

REMARKS

The foregoing amendments and these remarks are in response to the Office Action dated April 25, 2006. This amendment is timely filed.

At the time of the Office Action, claims 1 and 3-11 were pending. In the Office Action, Claim 11 was rejected under 35 U.S.C. §112. Claims 1 and 3-11 were rejected under 35 U.S.C. §103(a). The rejections are discussed in more detail below.

I. Rejection of claims under 37 C.F.R. §112

Claim 11 is rejected under 35 U.S.C. §112 was rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement and as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, the expression "reducing to cream" was asserted to fail to comply with the written description requirement for failing to teach how to form the cream and what ingredients are used to form the cream. With respect to this rejection, there appears to be a mistranslation of the Italian expression "ridurre in crema" from the priority application, which can be more accurately translated as "blending to the consistency of a cream". No other ingredients have to be added to the mixture to form a cream but rather, the mixture can simply undergo a blending step. The claim has been amended to recite the phrase "blending to the consistency of a cream", which is believed to overcome the rejection.

The Examiner has also rejected claim 11 for being indefinite for failing to point out and distinctly claim the subject-matter regarded as the invention. In particular, optional ingredients were disclosed which were not clearly specified. Applicant has added the optional ingredients specified in claim 7 to claim 11, and it is believed that this claim is now clear.

Withdrawal of the rejections is respectfully requested.

II. Rejections on Art

Claims 1 and 3-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,376,004 to Kuil et al. ("Kuil"), U.S. Patent No. 6,254,918 to Ammedick-Naumann, et al. ("Ammedick") and U.S. Patent Publication No. 2003/0129292 to Blaker, et al. (hereafter "Blaker"). Claim 11 was rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Kuil in view of Blaker and the website www.fatfree.com ("Moses").

Turning first to the rejection based upon Kuil, Ammedick and Blaker, the Office Action asserts that Ammedick relates to a stabilizing sauce aid containing an amount of organoleptically characterizing vegetal material in a range that encompasses that of the present claims and that it would thus be obvious to one of ordinary skill in the art to modify Kuil with the teaching of Ammedick to help stabilize the sauce. Moreover, the Office Action asserts that it is known to incorporate vegetables in high percentages in sauces, as disclosed in Blaker wherein a tomato puree is utilized at 64%.

Applicant notes that the foodstuff of Ammedick is a semi-fluid seasoning sauce aid intended to avoid the settling of the spices or coloring constituents which are generally not completely soluble in water or oil (column 1, lines 14-16). There follows a list, in column 1, lines 56 to 63, of those vegetable and fruit powders which are suitable to accomplish such a purpose. Thus, it can be seen that fresh products are not used in Ammedick. Column 2, lines 41 to 43, of Ammedick states that the sauce aid can be used to thicken foods such as sauces and soups. That such foodstuff is intended specifically as a sauce aid is even clearer when one considers that the organoleptically characterizing ingredients of vegetal origin are in the form of either powders or extracts (see both the examples).

In stark contrast, the foodstuff defined in the present claims is concerned with the production of a microbiologically stable sauce base (not aid) that successfully mimics the organoleptic features of a freshly made sauce. This result has been achieved by the use of organoleptically characterizing ingredients of vegetal origin that are in the form of fresh vegetables and mushrooms, as well as by way of a carefully devised and product-specific heat treatment profile which takes into account the microbiologically significant parameters of the ingredients

used (such as, for example, pH, water activity and the presence of particulate matter). Claims 1 and 11 have been amended to recite that the organoleptically characterizing ingredient of vegetal origin is a fresh product, to further differentiate the invention from Ammedick.

In addition, Applicant notes that the preparation of claim 1 and method of claim 11 do not require stabilization of the resulting sauce from a textural point of view. For this reason, it is submitted that a person having ordinary skill in the art, starting from Kuil and looking to produce a microbiologically stable sauce base comparable to freshly made sauces, would not arrive at the product defined in the present claims by reviewing Ammedick. The sauce base preparation of the present application is suitable to be added to a fluid base such as tomato, bechamel, yogurt, etc (see page 3, lines 4 to 8 and page 3 line 28 to page 4 line 6 of the present application). It is clear from the above-mentioned passages, as well as from page 1, line 29 to page 2, line 4 of the application, that such fluid bases, for example tomato puree, are not considered to be organoleptically characterizing ingredients.

Turning now to Blaker, Applicant notes that it is concerned with the production of a tomato product made solely from genetically modified tomatoes. In this respect, paragraph 128 from Blaker refers to an application of such tomato product and does not refer to a spaghetti tomato sauce as claimed, but rather to an onion and tomato sauce wherein the onion, as the organoleptically characterizing ingredient, is present in a tomato puree in the concentration of 0.5%.

Claim 11 was rejected under 35 U.S.C. §103(a) as unpatentable over Kuil in view of Blaker and Moses. The Office Action argues that it is well known to incorporate high percentages of vegetables in sauces as evidenced by Blaker. Blaker discloses the process of preparing a sauce comprising the steps of heating diced tomatoes to 60-120°C, followed by concentration. Moses teaches a recipe for preparing a creamy corn soup comprising the steps of forming a mixture of smooth pureed corn, broth, milk, and onion and subsequently adding the remaining corn and re-heating the mixture. It is asserted that it would thus be obvious to one of ordinary skill in the art to modify Kuil with the teachings of Blaker and Moses in order to provide a sauce that is microbiologically stable. Applicant respectfully disagrees with this rejection, for the reasons

discussed above regarding the rejection of claims 1 and 3-11 based upon Kuil, Ammedick and Blaker.

Applicant also notes that, tomatoes have a very low pH (approximately 4.5) compared to most other vegetables (pH 5-7) and mushrooms (pH 6-6.7). Due to such a low pH, the food preparation by Blaker does not pose microbial safety concerns as stringent as those faced in the present application, even when the tomato is in the diced form. This is confirmed by the fact that Blaker does not require a concentration step prior to the heat treatment and by the fact that it only requires heating tomatoes to (not at) a temperature of 60-120°C, preferably 60-80°C, without mention of a holding time. As mentioned above, the technical problem of the present application is to manufacture a vegetable and mushroom pasta sauce base which is microbially shelf-stable while mimicking the organoleptic characteristics of a freshly made sauce. In this context, Blaker is irrelevant.

With regard to the rejection based on Moses, it should be noted that Moses is concerned with the preparation of a creamy corn soup. As this is presumably a home-made preparation, there is no requirement for a long term sterilization of the soup, hence no need for a heat treatment aimed at obtaining a stable product at room temperature. The heat treatment undergone by the soup is very different to the one of the present claims.

The first of the two heat treatments involved in the process by Moses consists of a long covered simmering process, which does not allow much evaporation to take place. The second treatment is a light heating of the mix prior to consumption. Contrary to that which is recited by claim 11, the first heat treatment is a mild treatment aimed at achieving evaporation of part of the water content, and is followed by pasteurization to achieve microbial safety. It can thus be concluded that Moses is different from and does not teach or suggest the subject-matter of Claim 11. It follows that a person of ordinary skill in the art, starting from Kuil and wanting to devise a process for the production of a microbially stable vegetable and mushroom sauce base, would not have and could not have looked to Blaker and Moses to achieve the process of claim 11.

For the foregoing reasons, claims 1 and 11 are believed to recite patentable subject matter, and to be in condition for allowance. The dependent claims are believed to be allowable because


of their dependence upon an allowable base claim, and because of the further features recited.

III. Conclusion

Applicants have made every effort to present claims which distinguish over the prior art, and it is thus believed that all claims are in condition for allowance. Nevertheless, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicants respectfully request reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

Dated: 7-25-06


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